IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 30639 of 2005(V)

PETITIONER:

K.B.PURUSHOTHAMAN,
KAITHOTHU HOUSE,
PIPE LINE ROAD, PALARIVATTOM,
COCHIN-25.

BY ADV. SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

RESPONDENTS:

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1. THE STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO
GOVERNMENT, WATER RESOURCES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
ERNAKULAM.

3. LAND ACQUISITION SPECIAL TAHSILDAR
(GENERAL),
ERNAKULAM.

4. THE EXECUTIVE ENGINEER,
HUDCO DIVISION, KERALA WATER AUTHORITY,
COCHIN-11.

BY SRI.BABU VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-06-2007 THE COURT ON 18/06/2007 DELIVERED THE FOLLOWING:

W.P.(C) No. 30639 of 2005 APPENDIX

PETITIONER'S EXHIBITS

Ext.P1: True copy of G.O. (Ms) No. 43/2000/Ird dated 8-6-2000

Ext.P2: True copy of G.O (Ms) No.5/2002/Ird dated 25-1-2002

Ext.P3: True copy of Judgment in W.P(C) No.4044 of 2004 dated 14-6-2004

Ext.P4: True copy of Judgment in W.A> No. 1588 of 2004 dated 1-11-2004.

Ext.P5: True copy of Agreement Form on stamp paper handed over to the petitioner from the office of the 3rd respondent

Ext.P6: True copy of interim order in W.P.(C) No. 35479/04 dated 7-12-2004

Ext.P7: True copy of Judgment in W.P.(C) No.354 of 2004, dated 16-12-2004

Ext.P8: True copy of Notice dated 9-9-2005 issued by the Yahsildar (Spl) to the petitioner.

Ext.P9: True copy of the order -G.O (MS) No. 48/05/WRD. dated 30-8-2005

Ext.P10: True copy of the notice under Section 9(3) of the Land Acuisition Act 1894 dated 3-9-1999.

RESPONDENT'S EXHIBITS

Ext.R4(a) : True copy of the certificate of encumbrance on property dated 29-11-2005

//True copy//

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K.PADMANABHAN NAIR . J.

W.P.(C) No. 30639 of 2005

Dated this the 18th day of June 2007

JUDGMENT

petitioner was the owner of 3 ½ Cents of land in Survey No. 92/22/A/2/27 and in 92/22/A of Edappally Village. He was residing in a building situated in that land. Subsequently about 2 ½ cents of land of 3½ cents was acquired for the purpose of HUDCO Water Augmentation Scheme. The petitioner was paid the land value fixed by the Kerala Water Authority. In the mean while the Government passed an order giving package proposals for acceleration of land acquisition proceedings in HUDCO Aided Kochi Water Supply Scheme as per Ext.P1 dated 8-6-2000. and again as per Ext.P2 Government Order dated 25-1-2002. The petitioner filed writ petition No.4044/2004 contending that the Government did not give him the benefits under the package scheme. A learned single judge of this court has disposed of the writ petition with a direction to *the respondent to extend "the benefits of the package scheme to the petitioner after getting the required undertaking from him. Upon getting those benefits the petitioner is directed to vacate from the house occupied by him"*

2. Challenging that direction the Executive Engineer, HUDCO division, Kerala Water Authority has filed Writ Appeal No. 1588 of 2004. The Division Bench confirmed the direction of the single Judge to give the rehabilitation benefits to the petitioner with a modification. It was

ordered that instead of land, it is sufficient if the petitioner is given the money. The petitioner again filed writ petition No. 35479/2004 before this court . This Court disposed of the writ petition holding that nothing contained in Ext.P14 (an agreement entered into between the petitioner and the K.W.A) will stand against the petitioner to secure any further relief as may be available to him under the judgment in writ appeal 1588/2004.

3. According to the petitioner thereafter the Government passed Ext.P9 order by which he is virtually denied of the package benefits . The challenge in the writ petition is about clause (v) in the order, which reads as follows.

"The benefits of rehabilitation by way of alternate land will be subject to the following further conditions.

" (a) The beneficiaries shall execute an agreement that they forego the claim for litigation for additional compensation

(b) The balance unusable land, if any left over after acquisition will be surrendered free of cost to the Kerala Water Authority

(c) The beneficiaries will not be eligible for any other concession/ benefits in respect of (b)

4. The grievance of the petitioner is regarding sub-clause (b) of clause (v). Sub-clause (b) of clause (v) provides that the balance unusable land if any left over after acquisition will be surrendered free of cost to the Kerala Water Authority. According to the petitioner he had already sold the land to a stranger and he is not in possession of the

same and hence he is not in a position to surrender the same. It is also contended that there is steep rise in the land value and as such it will not be possible for him to surrender that land which was already sold. It is also contended that in view of the judgment in writ appeal No.1588/2004 the respondents are not entitled to insist that the petitioner will be given the rehabilitation benefits only after considering the balance portion of the land at free of cost.

5. A Division Bench of this court directed the respondents to pay the money equivalent to the land to persons who are entitled to rehabilitation benefits The court found that the petitioner is entitled to get the package for the rehabilitation benefit. So it is not just and proper to insist for a surrender of the unusable land if any left over after acquisition. The petitioner is entitled to get the benefit, but the respondents can limit it to the value for 2 ½ cents which was already acquired.

5. In the result, the writ petition is allowed in part. It is declared that in the case of the petitioner, the respondents are not entitled to insist that he shall surrender any land left over after acquisition at free of cost in view of the judgment of this court in writ petition 35479/2004. He is entitled to get the value of 2 ½ cents of land which was quantified by the Government. The amount shall be paid to the petitioner within two months from the date of receipt of the copy of the judgment.

K.PADMANABHAN NAIR, JUDGE

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